UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-80100-CR-ROSENBERG/REINHART

UNITED STATES OF AMERICA

v.
LANNY TODD FRIED,

Defendant.
_____/

FACTUAL PROFFER

Defendant Lanny Todd Fried, his counsel, and the United States agree that, had this case proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt, and that the following facts are true and correct and are sufficient to support a plea of guilty:

1. At all times relevant to the Information, substance abuse treatment was regulated under state and federal law. Pursuant to Florida's Marchman Act, appropriate substance abuse treatment needed to be "a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle." Fl. Stat. 397.311(a).

2. At all times relevant to the Information, the Marchman Act made it unlawful for any person or agency to act as a substance abuse service provider unless it was properly licensed. Fl. Stat. § 397.401(1); Fl. Admin. Code § 65D-300.003(1)(a).

3. The Patient Protection and Affordable Care Act of 2010 ("ACA"), Pub. L. 111-148, and other federal laws expanded the availability of private insurance to pay for substance abuse treatment in several ways. First, the ACA allowed parents to maintain health insurance for their children through their own insurance policies until the children reached the age of 26. Second, federal law mandated that substance abuse treatment and other mental health treatment must be covered and reimbursed by insurance policies in the manner and at the same levels as other medical treatment. Third, the ACA required insurance companies to cover individuals regardless of prior existing conditions. Fourth, annual and lifetime caps on coverage were removed. Fifth, the ACA created insurance exchanges that allowed uninsured individuals to apply for and obtain coverage from private insurers. The combination of these provisions created insurance coverage for patients and substance abuse treatment that had previously been excluded from coverage. Federal health care benefits programs were likewise expanded.

4. These federal laws created access to coverage through a number of avenues, including

health plans sponsored by private employers, federal health care benefits programs, and health plans offered directly by private insurance companies. Private insurance companies administer health plans sponsored by private employers and governmental employers. Health plans sponsored by private employers are governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*, while those sponsored by governmental employers and certain others are exempted from ERISA's jurisdiction.

5. The Federal Employees Health Benefits Program ("FEHBP") provided medical benefits, items and services to federal employees and their dependents, including substance abuse services. The United States Office of Personnel Management ("OPM") managed the FEHBP and contracted with various insurance companies to offer these benefits. FEHBP reimbursed those insurance companies out of government funds for the money the insurance companies paid out for medical benefits, items and services for federal employees and their dependents. BlueCross/BlueShield (BCBS) was one of the various insurance companies contracted by the Office of Personnel Management to offer medical benefits, items and services to federal employees under the FEHBP.

6. The National Railroad Passenger Corporation, doing business as Amtrak ("Amtrak"), was a private, for profit, Government corporation, that operated a nationwide system of passenger rail transportation. As part of its employee benefits package, Amtrak established employee health and welfare benefit plans to provide healthcare to their employees, including their spouses, domestic partners, and dependent children (collectively, "dependents").

7. Both ERISA and non-ERISA health benefit plans, including ACA plans, were offered or administered by private insurance companies, including Blue Cross/Blue Shield, Aetna, Cigna Behavioral Health, Cigna Health & Life Insurance Company, United Behavioral Health, and United Health Group.

8. All of these health benefit plans were "health care benefit programs," as defined in Title 18, United States Code, Section 24(b), that is, "public or private plans or contracts, affecting commerce, under which any medical benefit, item or service is provided to any individual."

9. Regardless of the type of plan held by a patient, the amount of coverage and terms and conditions of billing and payment were governed by the terms of the individual's insurance documents, and the insurance company administering the plan had the authority, responsibility, and discretion to make coverage determinations and to process and make payments on claims.

10. Chapter 817 of the Florida Statutes, known as the "Florida Patient Brokering Act," made it a felony for any person, health care provider, or health care facility, including any licensed substance abuse service provider, to: "(a) Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility; (b) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility; (c) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind,

or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgement of treatment from a health care provider or health care facility; or (d) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph (a), paragraph (b), or paragraph (c)." Fla. Stat. § 817.505.

11. Florida law also stated that it "shall constitute a material omission and insurance fraud . . . for any service provider, other than a hospital, to engage in a general business practice of billing amounts as its usual and customary charge, if such provider has agreed with the insured or intends to waive deductibles or copayments, or does not for any other reason intend to collect the total amount of such charge." Fla. Stat. § 817.234(7)(a).

12. Under state and federal law, health benefit plans were only responsible for claims for services that: (a) were "medically necessary," (b) were actually rendered; (c) were provided by a properly licensed service provider, and (d) complied with the terms of the health care plan, including the obligation to pay co-insurance and deductibles and to comply with state law.

13. Bodily fluid testing could be used to detect recent drug or alcohol use by a client by conducting various tests on a client's urine, blood, and saliva. Urine Analysis or urinalysis ("UA") testing complexity ranged from screening tests – also known as point of care ("POC") testing – which provided instant results, to confirmatory testing, which was sent to a laboratory, for more complex analysis. Laboratories could also conduct complex analysis on blood and saliva samples.

14. Like other medical tests, bodily fluid testing could be billed to insurance and reimbursed pursuant to the terms of the insurance policy. Insurance companies were only responsible for claims for testing that were "medically necessary," actually performed, prescribed, and conducted by a properly licensed service provider, and conducted and billed in compliance with the terms of the health care plan, including the obligation to pay co-insurance.

15. Over the past fifteen years, defendant Lanny Fried ("Fried") appeared as an officer or owner of a number of businesses, including Net Worth Enterprises, LLC; High Profile Group, LLC; L.J. Marketing and Consulting of Miami, LLC; B2B Marketing Solutions, LLC; Awesome Industries Inc.; Fried Consulting, Inc.; LTF Consulting Inc (which is still an active corporation); and North Miami Beach Medical Marketing LLC. Fried worked as a mortgage and real estate broker, and has been paid for referring real estate, mortgage, legal, and accounting clients to various individuals. Fried had no training or experience in urinalysis testing, the clinical laboratory business, or any aspect of substance abuse treatment, and, due to his criminal history, could not legally own a treatment facility or work in a position where he had direct contact with substance abuse treatment patients.

16. Reflections Treatment Center (Reflections) was located at 5100 Coconut Creek Parkway, Margate, Florida, in Broward County, in the Southern District of Florida. Reflections purported to operate as a licensed "substance abuse service provider" or "treatment center" that is, it purportedly offered clinical treatment services for persons suffering from alcohol and drug addiction. Laura Chatman was the nominee owner of Reflections, although Kenneth Chatman was the true owner and made all financial decisions. Due to Kenneth Chatman's felony conviction, his ownership interest was not disclosed to the State of Florida and, thus, Reflections was not properly licensed.

17. Smart Lab LLC (Smart) was located at 10385 Ironwood Road, Suite 130, Palm Beach Gardens, Florida, in Palm Beach County, in the Southern District of Florida. Smart offered bodily fluid testing services including confirmatory urinalysis testing. In 2015, defendant Lanny Fried attended a meeting where another individual introduced Kenneth Chatman to H. Hamilton Wayne, a/k/a "Hawkeye," the CEO and one of the owners of Smart. In or around September 2015, Reflections started using Smart to perform urine confirmatory drug testing after Kenneth Chatman was paid a bribe to begin using Smart's services and was promised kickbacks in exchange for referring all of Reflections' urinalysis testing to Smart. The defendant facilitated these transactions and agreements. In an attempt to hide the kickback payments, Smart paid "sales representatives" a "commission" for each urine sample that Reflections and other treatment facilities referred to the lab for testing. These payments to the sales reps were actually illegal kickbacks paid directly or indirectly to owners or employees of treatment facilities that were disguised as sales commissions. Smart billed private insurance companies as much as $6,200 for testing a single urine specimen.

18. To maximize the kickbacks, Smart prepared "standing orders" and recommended that Reflections and other entities run every available urinalysis test three times per week. Reflections used medical directors who were willing to sign these standing orders even though the tests were not medically necessary and were not used to direct the patients' medical treatment. Smart submitted claims to numerous health benefit plans for the unnecessary and excessive urinalysis testing. Fried and Smart also were aware that many of the urine samples from Reflections and other entities were not legitimate, that is, testing conducted by Smart's own employees revealed that: (a) the samples were inconsistent with human metabolism of drugs leading the scientists to conclude that urine was shared among patients, (b) patients were actively using illegal drugs; and (c) patients who had not been using drugs when they started at Reflections had begun using drugs while allegedly in treatment. Despite this knowledge, Fried continued to act as Smart's sales representative for Reflections and Smart submitted these fraudulent claims to the health benefit plans and received proceeds in interstate commerce that were deposited into Smart's bank account at Wells Fargo Bank.

19. Smart and Fried had an agreement that Fried would receive "commissions" totaling approximately 50% of the insurance reimbursements for the substances abuse treatment facilities he referred to Smart. Although the payments were classified as commissions, in reality they were kickbacks for the referral of excessive, medically unnecessary, fraudulent, and duplicative confirmatory drug testing. On multiple occasions, Fried used a portion of his commissions to pay Kenneth Chatman illegal cash kickbacks to induce Chatman to continue referring urine samples to Smart. Using Fried as a "middleman" for the payments to Chatman disguised the true ownership and purpose of the funds. From 2015 through 2017, Smart paid Fried over $600,000. These payments came from proceeds of specified unlawful activity, that is, health care fraud, and include checks payable from Smart Lab LLC's Wells Fargo bank account number XXXXXX1499, to the defendant. After receiving the checks, the defendant would deposit them into a personal or corporate bank account or cash them at a "check cashing store."

20. Fried recruited friends and business associates to engage in similar activity, including Bosco Vega ("Vega"), Mark Hollander ("Hollander") and G.B. (G.B.). These individuals signed employment agreements with Smart that purported to make them "sales representatives" for Smart. These agreements were used to make it appear that monies paid by Smart to co-conspirators Lawrence Weisberg ("Weisberg"), Vega, Hollander, and G.B. were for services rendered. In truth and in fact, the majority of the wages and

commissions Smart paid to Weisberg, Vega, Hollander, and G.B. were simply passed through to Fried. The employment contracts were created to hide the true purpose and recipient of the payments. Although these individuals did not perform any actual services for Smart, Smart paid them "commissions" from the proceeds of specified unlawful activity, that is, health care fraud, as follows: Smart paid Weisberg over $175,000; Smart paid Vega over $250,000; Smart paid Hollander over $700,000; and Smart paid G.B over $100,000. The payments from Smart were deposited into the personal or corporate accounts of Weisberg, Hollander, Vega, and G.B. Those individuals then disbursed the funds from their accounts to Fried, Chatman, or other persons/entities per Fried's instructions.

21. The proceeds of the health care fraud scheme were deposited into bank accounts that Smart, Fried, Weisberg, Hollander, Vega, and G.B. had at Wells Fargo Bank, Santander Bank, Bank of America, and other financial institutions. Wells Fargo, Santander, and Bank of America are domestic financial institutions as defined by federal law involved in interstate commerce. The deposits and disbursements of the funds by Smart, Fried, Weisberg, Hollander, Vega, and G.B., to and through, Wells Fargo, Santander, Bank of America, and other financial institutions affected interstate commerce. The funds laundered by Fried, Weisberg, Hollander, Vega, and G.B. totaled $1,833,127.92.

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UNITED STATES ATTORNEY

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